IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

OP.No. 21619 of 1999(W)

PETITIONER:

M/S.GEEJAI CONSTRUCTIONS,
M.D.C.CENTRE, K.K.ROAD,
KOTTAYAM, REP. BY ITS
MANAGING PARTNER,
SHRI.GEORGE JOSEPH KONDODY.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENTS:

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1. THE ASSISTANT COMMISSIONER OF INCOME-TAX,
CIRCLE-I, KOTTAYAM.

2. THE COMMISSIONER OF INCOME TAX,
TRIVANDRUM.

3. THE CHIEF COMMISSIONER OF INCOME TAX,
ERNAKULAM.

4. THE CENTRAL BOARD OF DIRECT TAXES,
REP. BY ITS SECRETARY, NEW DELHI.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
ADV. SRI.GEORGE K. GEORGE, SC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.35644&38578/1999 IN OP NO.21619/1999

DISMISSED:

28.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF ASSESSMENT ORDER DT.22.12.1988 FOR THE YEAR 1983-84.

P2: .DO. DT.31.12.1987 .DO. 1984-85.

P3: .DO. 1985-86.

P4: .DO. DT.2.9.1988 1986-87.

P5: TRUE COPY OF APPLICATION FOR WAIVER OF INTEREST DT.26.4.1989 FILED BY PETITIONER BEFORE THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

P6: TRUE COPY OF PETITION FILED U/S.273A FOR WAIVER OF INTEREST AND PENALTY BY PETITIONER DT.10.10.94.

P7: .DO. DT.30.11.94.

P8: TRUE COPY OF LETTER DT.8.1.96 SENT BY PETITIONER TO R2.

P9: .DO. DT.11.7.1994 .DO.

P10: .TRUE COPY OF TELEGRAM DT.12.1.95 SENT BY PETITIONER TO R2.

P11: TRUE COPY OF ORDER PASSED BY COMMISSIONER OF INCOME TAX, TRIVANDRUM U/S.273A OF THE IT ACT, DT.31.5.99.

P12: TRUE COPY OF NOTICE DT.18.8.99 ISSUED BY INCOME TAX OFFICER, WARD I, KOTTAYAM.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.21619 of 1999

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Dated this the 28th day of November, 2007.

JUDGMENT

The petitioner is challenging Ext.P11 order whereunder the Commissioner of Income Tax rejected petitioner's application filed under Section 273A of the Income Tax Act for waiver of interest under Section 139(8) and Section 217 and penalty levied under Section 271(1)(a) and Section 273(1)(b) of the Act.

2. I heard counsel appearing for the petitioner and Standing Counsel appearing for the respondents. I have also gone through Ext.P11 order. Section 273A provides in sub-section (1) that waiver of interest and penalty can be granted only if the assessee has co-operated in the enquiry and made full and true disclosure of the income. Another important condition for waiver is payment of interest or penalty as the case may be, or making of satisfactory arrangement for payment. It is found in Ext.P11 that petitioner had not made any payment of interest or penalty or made any arrangement for payment of the said sum. Even though counsel submitted that petitioner has made arrangement for payment, there is nothing to indicate as to what was the arrangement made for payment. The demand is raised for the

assessment years 1983-84 to 1986-87 and the impugned order was passed 12 years after the last year for which demand was raised. The petitioner could have made the application after making payment or after making arrangement for payment or could have made the payment before disposal of the application. However, petitioner has no case that petitioner has complied with any of these conditions. Standing Counsel submitted in court that besides not making payment and not making any arrangement for payment, petitioner has even made claim for Kar Vivad Samadhan Scheme for payment which, though granted to the petitioner, was not availed by the petitioner. The petitioner himself produced proceedings under the Kar Vivad Samadhan Scheme vide Ext.P12 and it is settled position through various decisions of several courts including that of this court in P.A.MOHAMMED ABDUL KHADER & CO. V. COMMISSIONER OF INCOME TAX AND ANOTHER (1978) 112 ITR 552 that the assessee can claim waiver of interest only if conditions are satisfied. Since petitioner admittedly did not satisfy any of the conditions and the conditions are not satisfied even when the O.P. was filed, there is no justification to interfere with the impugned order. The O.P. is devoid of any merit and is dismissed.

C.N.RAMACHANDRAN NAIR
Judge

pms